IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.830 OF 2006

Shri.Dashrath Krishna Gadekar ...Appellant

V/s.

Smt.Sakhabai Sadashiv Gadekar & Ors. ... Respondents

Ms.Sharvari Shailendra i/b. P.S. Dani for Appellant.
Mr.Macchindra Deshmukh i/b. Milind Deshmukh for Respondent Nos.1 3 and 4.

CORAM : V.M. KANADE, J.

DATED : 24th JULY, 2007.

P.C:-

1. Heard learned counsel for the Appellant and the learned counsel for the Respondent Nos.1, 3 and 4.

2. Appellant/Orig.Plaintiff is challenging the order passed by the Trial Court whereby the suit filed by the Appellant for partition and separate possession was dismissed and this order was also confirmed by the lower Appellate Court.

3. Brief facts are that the Appellant filed suit claiming partition and separate possession in respect of suit property Gat No.621, 618, 617 and it was alleged that these properties were ancestral properties

of the Plaintiff and Defendants. In the claim, it was alleged that the properties belonged to their common ancestral Keshav Gadekar and therefore, the Plaintiff was entitled to get half share in the said properties.

4. Learned counsel for the Appellant/Plaintiff submitted that the Trial Court and also the lower Appellate Court erred in law in discarding testimony of Appellant and also discarding documentary evidence which was brought on record by him. She submitted that said finding, therefore, was contrary to the documentary and oral evidence on record and as such this Court, therefore, could exercise its jurisdiction under Section 100 of C.P.C. She invited my attention to the finding recorded by both the Courts below and submitted that said finding was perverse since reasons which were given for discarding said oral and documentary evidence are contrary to the record. She submitted that both the Courts below erred in holding that Defendants had discharged their burden of proving that the property No.618 was a self-acquired property of the ancestral of Defendants. She submitted that since Defendants had come out with the case that the property was a self-acquired property, onus of establishing this fact was on the

Defendants. She submitted that both the Courts below erred in shifting this burden on the Appellant/plaintiff.

5. Learned counsel for the Respondents/Defendants, on the other hand, invited my attention to the admissions which were given by the plaintiff in their depositions which have been recorded in the judgment by the Trial Court and also lower Appellate Court. He submitted that both the Courts below had recorded a concurrent finding of fact and therefore, no case was made out for interfering with the said orders which have been passed by both the lower Courts. He further submitted that so far as question of a self-acquired property is concerned, Defendants had produced documentary evidence on record and thus proved that the property was their self-acquired property. Appellant/Plaintiff, however, did not rebut this fact by leading evidence to disprove this fact. He submitted that both the lower Courts had, in fact, recorded that the Appellant/Plaintiff had not challenged documentary evidence which was brought on record by the Defendants.

6. In my view, after having perused the orders passed by both

the lower Courts, there is no reason to interfere with the finding of fact recorded by both the Courts below in favour of the Defendants. No substantial question of law is raised in the Second Appeal and hence, Second Appeal is dismissed.

V.M. KANADE, J.